IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7430 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LEELABEN KANUBBHANI CHUDASMA

Versus

DESK OFFICER GOVT. OF INDIA

Appearance:

1. Special Civil Application No. 7430 of 2002

MR PH PATHAK for Petitioner No. 1

MR MUKESH R SHAH for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 2

MR MS RAO for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/05/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Pathak for the petitioner and Mr. M.R. Shah for respondent No.1. Learned advocate Ms. P.J. Davawala appearing for the respondent No. 2. Rule, service of which is waived by the learned advocate Mr. Shah and Ms. Davawala for the respondent No.1 and 2 respectively. In the facts and circumstances of the case, and with the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

In this petition, the petitioner has challenged the order passed by the respondent no.1 dated 7/23rd January, 2001 wherein the respondent NO.1 has come to the conclusion that the termination of the petitioner's service was done after issuing one month prior notice and no industrial dispute is subsisting and, therefore, respondent no.1 has not referred the dispute for adjudication.

During the course of hearing, it was submitted by the learned advocate Mr. Pathak for the petitioner that it amounts to adjudication on merits by the respondent no.1 because the respondent no.1 has come to the conclusion that the respondent no.1 has complied with the provisions of the ID Act,1947 before terminating the services of the petitioner. According to him, it is the determination on merits and respondent no.1 has committed gross error in passing such order. He also submitted that the respondent no.1 is having no jurisdiction to decide the merits of the matter while deciding as to whether the industrial dispute is required to be referred to or not. He has, therefore, submitted that the said order is required to be quashed and set aside by directing the respondent no.1 to reconsider the matter under the provisions of the ID Act, 1947.

On the other hand, it was submitted by the learned advocate Mr. M.R. Shah for the respondent no.1 that the detailed reply was submitted by the respondent no.2 and it was submitted therein that the respondent no.2 has complied with the provisions of the ID Act, 1947 before terminating the services of the petitioner and, therefore, the respondent no.1 formed prima facie opinion for not referring the matter for adjudication and in doing so, the respondent no.1 has not adjudicated the dispute nor has decided the lis between the parties and has not committed any error in passing such an order and, therefore, no interference is necessary.

I have considered the submissions made by the learned advocates for the parties. In order dated 7/23rd

January, 2001, the respondent NO.1 has considered the merits for coming to the conclusion that no industrial dispute subsists. The reason given for the said conclusion is reproduced as under:

> "It is reported that the termination was done after issuing one month prior notice. No ID subsists."

I am of the opinion that the bare perusal of the order dated 7/23rd January, 2001 would make it clear that the respondent no.1 has adjudicated the matter on merits for which he is having no jurisdiction. Mere compliance of the provisions of ID Act before termination of the services of the workman is not necessary. Employer is required to justify also. Therefore, considering this aspect, the order dated 7/23rd January, 2001 which is at page 7, Annexure A to this petition is quashed and set aside on that ground alone with a direction to the respondent no.1 to reconsider the matter in accordance with law within three months from the date of receipt of copy of this order.

Rule is made absolute accordingly with no order as to costs.

Dt. 7.5.2003. (H.K. Rathod,J.)

Vyas